

STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. JAMES P. NOECKER
Judge, 45th Circuit Court
Centreville, MI 49032

FORMAL COMPLAINT NO.: 73

ANSWER

NOW COMES the Respondent, Honorable James P. Noecker, by and through his attorneys,
Fraser Trebilcock Davis & Dunlap, P.C., and, in response to the complaint against him.

COUNT I

RESPONDENT'S PERSISTENT USE OF ALCOHOL

1. Admitted.
2. Neither admit nor deny for the reason that the allegation is vague.
3. Admitted.
4. Respondent admits to successfully concluding the two (2) year program.

However, the second sentence is confusing in nature as stated, and is therefore denied.

5. Admitted.
6. Respondent admits that he resigned as Chief Circuit Judge of the 45th Circuit and that the Supreme Court appointed Philip D. Schaefer as Chief Judge.

7. Admitted.
8. Admitted.
9. Respondent admits he suffered a relapse, but denies the balance of the allegations in paragraph 9 as they are not true.

10. Paragraph 10 (a) – (i) states legal conclusions and does not require an answer.

WHEREFORE, having answered the allegations, Respondent respectfully request that judgment be entered in his favor and the complaint dismissed.

COUNT II

VIOLATIONS OF THE LAW AND MAKING FALSE STATEMENTS TO THE POLICE

Respondent incorporates by reference his answers to paragraphs 1 through 10 as if fully set forth herein.

11. Admitted.

12. Admitted.

13. Admitted.

14. Denied. All persons interviewed by the police at the accident scene denied seeing any evidence of intoxication and Respondent states he had not been drinking.

15. Admitted. However, Respondent states that he left to assist the store owner at her request in locating her husband. After speaking to the store owner who was on the phone with the police.

16. Denied. Respondent arrived home no later than 5:40 p.m. and the Michigan State Police came to his home at approximately 7:00 p.m. Phone records demonstrate Respondent called the party store at 5:38 p.m.

17. Respondent admits the Michigan State Police spoke separately to him and his wife. Respondent further admits that he stated he had consumed a single glass of vodka after arriving home and denied drinking prior to the crash. Respondent leaves Complainant to their proofs regarding any statements made by Respondent's wife. Respondent further affirmatively asserts that any statements of Audra Noecker, Respondent's wife, are subject to a statutory

marital privilege that Respondent has not waived and are not admissible in this matter and this allegation of the complaint should be stricken.

18. Respondent admits taking a PBT and the results of which at 7:22 p.m. were .10. The balance states a legal conclusion and does not require an answer. Respondent affirmatively states that he was administered and passed the Gaze Nystagmus test after to taking the PBT.

19. Admitted.

20. Denied because Respondent's statements to the police and media were true.

21. Paragraph 21 states legal conclusions and does not require an answer.

WHEREFORE, having answered the allegations, Respondent respectfully request that judgment be entered in his favor and the complaint dismissed.

COUNT III

FALSE STATEMENTS TO JUDICIAL TENURE COMMISSION

Respondent incorporates by reference his answers to paragraphs 1 through 21 as if fully set forth herein.

22. Admitted.

23. Respondent admits the facts contained in the 1st sentence and denies the balance of paragraph 23 as untrue.

24. Paragraph 24 states legal conclusions and does not require an answer.

WHEREFORE, having answered the allegations, Respondent respectfully request that judgment be entered in his favor and the complaint dismissed.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim regarding habitual intemperance, failure to perform judicial duties, persistent neglect of judicial duties, or violations of MCR 8.107, 8.110 in that no facts have been stated which would support such a claim.

2. The allegations in paragraph 9 of the Complaint are simply naked, conclusory unsupported allegations, that do not state a factual basis for the conclusion.
3. Some or all of the Counts of the Complaint are based upon information subject to legal privileges including the marital privilege, MCL 600.2162 and those associated with the Public Health Services Act 42 USC §290dd-2, Michigan Public Health code MCL 333.6111, the Health Insurance Portability & Accountability Act of 1996 (Pub. L. No. 104-191) and are therefore inadmissible.

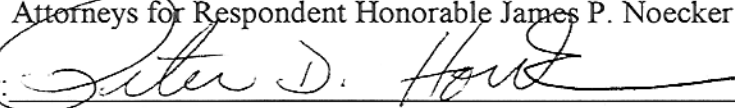
Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.

Attorneys for Respondent Honorable James P. Noecker

September 15, 2003

By:


Peter D. Houk (P-15155)

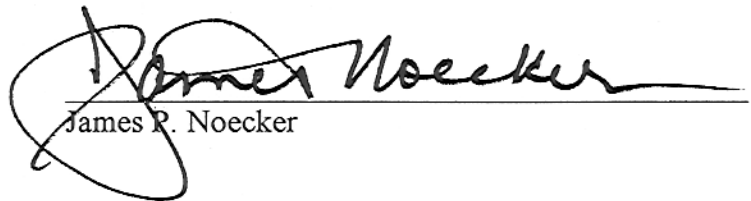
Brian P. Morley (P-58346)

1000 Michigan National Tower

Lansing, MI 48933

(517) 482-5800

I James P. Noecker swear that the above stated information is true to best of my information knowledge, and belief.


James P. Noecker

Subscribed and sworn to before me this 16th day of September, 2003.


Notary Public

KATHY KLINE
Notary Public, St. Joseph Co., MI
My Commission Expires April 10, 2004